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10/081,095	02/22/2002	David Allen Loewenstein		2840

7590

11/28/2003

David A. Loewenstein  
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EXAMINER

COLLINS, DOLORES R

ART UNIT PAPER NUMBER

3722

DATE MAILED: 11/28/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/081,095

Applicant(s)

LOEWENSTEIN, DAVID ALLEN

Examiner

Dolores R. Collins

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-5, 13 and 18-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 13 and 18-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 11.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Amendment***

Examiner acknowledges response by applicant's representative received 9/2/03.  
Examiner acknowledges the cancellation of claims 6-12 & 14-17 and the addition of claims 19-29.

### ***Specification***

Claims 1 & 3-5 are objected to because of the following informalities: it is unclear whether applicant is claiming apparatus or a method of play. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-5, 13, 18 & 19-25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject

matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claims are amended to include both suit and value on one side and a suit or value on the other side. This is not supported by the specification.

Applicant is required to cancel the new matter in the reply to this Office Action.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 26-29 are rejected under 35 U.S.C. 112, second paragraph, as failing to set forth the subject matter which applicant(s) regard as their invention. Evidence that claims 26-29 fail(s) to correspond in scope with that which applicant(s) regard as the invention can be found in the original specification filed 2/22/02. In that paper, applicant has stated that he is claiming **A Card Game** and this statement indicates that the invention is different from what is defined in the claim(s) because these claims are now claiming **An Electronic Device**.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claim 1 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by  
Silliman, Jr.

Silliman, Jr. discloses Playing Cards And Games. His cards teach a value on one side and suit and value on the other.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over  
Silliman, Jr. in view of Hoyt et al.

Regarding claim 2

Silliman, Jr. discloses Playing Cards And Games. His cards teach a value on one side and suit and value on the other, but fail to explicitly teach cards with a non-descriptive back.

Hoyt et al. discloses Playing Cards And Method For Playing card Games Therewith. Hoyt teaches the limitation that Silliman fails to teach, i.e., a deck of playing cards where some cards are standard cards with non-descriptive backs (see abstract, claims 3-10 & figures 1-3). It would be obvious in view of Hoyt to include cards with non-descriptive backs to add variety to the cards and add excitement to the game.

3. Claims 3-5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Silliman, Jr. in view of Stanton and further in view of Hoyt et al.

Regarding claims 3-5 & 25

Silliman, Jr. discloses Playing Cards And Games. His cards teach a value on one side and suit and value on the other, but fail to explicitly teach that his cards are dealt in the shape of a diamond.

Stanton discloses Improvements in and relating to Playing cards. Stanton teaches cards with indicia arranged into four suits on one side and values on the other side (page 1, lines 14-24 & figures 1-4).

It would be obvious in view of Stanton to arrange the card to add excitement to the game played by the players.

Further, It would be obvious to deal cards in whatever shape that is desired since shape would constitute a design issue. Additionally, the dealing of cards in various

shapes is well known in the art (e.g. in the game of *Memory* cards are dealt in the shape of a square, in the game of *Solitaire*, cards are ultimately dealt in the shape of a triangle.

Silliman, Jr. and Stanton fail to explicitly teach the exchanging of cards between hands and players being paid off according to a pay table.

Hoyt teaches the game of poker played as one of the embodiments and that his cards are dealt certain locations and specific to the game of Tic-Tac-Toe. It is known that in the game of poker, cards are dealt face down, one or more bets are made, players are allowed to modify hands by exchanging cards and games are resolved using pay tables.

It would be further obvious in view of Hoyt to include his explicit to add excitement to the game played by the players.

4. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Silliman, Jr.

Regarding claim 13

Silliman, Jr. discloses Playing Cards And Games. His cards teach a value on one side and suit and value on the other, but fail to explicitly teach cards with a non-descriptive back. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structure.

5. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Silliman, Jr. as applied to claim 13 above, and further in view of Moody.

Moody discloses Electronic Video Poker Game, which deals multiple rows and varying numbers of cards for his game (see figures, abstract and claims). It would be obvious in view of Moody to use his method of play to add excitement for the players.

6. Claims 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Silliman, Jr. as applied to claim 13 above, and further in view of Hoyt and Moody.

Hoyt teaches the game of poker played as one of the embodiments and that his cards are dealt certain locations and specific to the game of Tic-Tac-Toe. It is known that in the game of poker, cards are dealt face down, one or more bets are made, players are allowed to modify hands by exchanging cards and games are resolved using pay tables. Hoyt fails to explicitly teach dealing multiple rows of five cards or rows with varying numbers of cards for game play.

Moody discloses Electronic Video Poker Game, which deals multiple rows and varying numbers of cards for his game (see figures, abstract and claims). It would be obvious in view of Moody to modify the method of Hoyt to add excitement for the players.

7. Claims 26-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moody.

Moody discloses Electronic Video Poker Game, which deals multiple rows and varying numbers of cards for his game (see figures, abstract and claims). . It is known that in the game of poker, cards are dealt face down, one or more bets are made,



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players are allowed to modify hands by exchanging cards and games are resolved using pay tables.

***Allowable Subject Matter***

Claims 13, 18 , 19- 21 & 22-24 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

***Response to Arguments***

Applicant's arguments filed 9/2/03 have been fully considered but they are not persuasive. Applicant's arguments are based on his amendment of the claims to better define the invention. Although the invention is better defined, the amendments appear to introduce new matter, which is not supported by the original disclosure.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hoyt et al. (155), Weigl, Smith, jr. and Smith are cited to show the state of art with respect to features of the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ***Dolores R. Collins*** whose telephone number is ***(703) 308-8352***. The examiner can normally be reached on 9:00 A.M. - 5:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ***BENJAMIN LAYNO*** can be reached on ***(703) 308-1815***. The fax phone numbers for the organization where this application or proceeding is assigned are ***(703)***

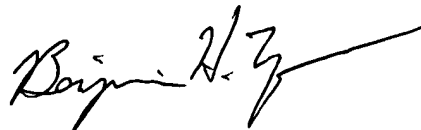
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**305-3579** for regular communications and **(703) 305-3579** for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is **(703) 308-1148**.

  
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November 20, 2003



Benjamin H. Layno  
Receptionist